

## § 708.1

## 10 CFR Ch. III (1–1–09 Edition)

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AUTHORITY: 42 U.S.C. 2201(b), 2201(c), 2201(i), and 2201(p); 42 U.S.C. 5814 and 5815; 42 U.S.C. 7251, 7254, 7255, and 7256; and 5 U.S.C. Appendix 3.

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### Subpart A—General Provisions

#### § 708.1 What is the purpose of this part?

This part provides procedures for processing complaints by employees of DOE contractors alleging retaliation by their employers for disclosure of information concerning danger to public or worker health or safety, substantial violations of law, or gross mismanagement; for participation in Congress-

sional proceedings; or for refusal to participate in dangerous activities.

#### § 708.2 What are the definitions of terms used in this part?

For purposes of this part:

*Contractor* means a seller of goods or services who is a party to:

(1) A management and operating contract or other type of contract with DOE to perform work directly related to activities at DOE-owned or -leased facilities, or

(2) A subcontract under a contract of the type described in paragraph (1) of this definition, but only with respect to work related to activities at DOE-owned or -leased facilities.

*Day* means a calendar day.

*Discovery* means a process used to enable the parties to learn about each other's evidence before a hearing takes place, including oral depositions, written interrogatories, requests for admissions, inspection of property and requests for production of documents.

*DOE Official* means any officer or employee of DOE whose duties include program management or the investigation or enforcement of any law, rule, or regulation relating to Government contractors or the subject matter of a contract.

*EC Director* means the Director of the Office of Employee Concerns at DOE Headquarters, or any official to whom the Director delegates his or her functions under this part.

*Employee* means a person employed by a contractor, and any person previously employed by a contractor if that person's complaint alleges that employment was terminated for conduct described in § 708.5 of this subpart.

*Field element* means a DOE field-based office that is responsible for the management, coordination, and administration of operations at a DOE facility.

*Head of Field Element* means the manager or head of a DOE operations office or field office, or any official to whom those individuals delegate their functions under this part.

*Hearing Officer* means an individual appointed by the OHA Director to conduct a hearing on a complaint filed under this part.

*Management and operating contract* means an agreement under which DOE

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contracts for the operation, maintenance, or support of a Government-owned or -leased research, development, special production, or testing establishment that is wholly or principally devoted to one or more of the programs of DOE.

*Mediation* means an informal, confidential process in which a neutral third person assists the parties in reaching a mutually acceptable resolution of their dispute; the neutral third person does not render a decision.

*OHA Director* means the Director of the Office of Hearings and Appeals, or any official to whom the Director delegates his or her functions under this part.

*Party* means an employee, contractor, or other party named in a proceeding under this part.

*Retaliation* means an action (including intimidation, threats, restraint, coercion or similar action) taken by a contractor against an employee with respect to employment (*e.g.*, discharge, demotion, or other negative action with respect to the employee's compensation, terms, conditions or privileges of employment) as a result of the employee's disclosure of information, participation in proceedings, or refusal to participate in activities described in § 708.5 of this subpart.

*You* means the employee who files a complaint under this part, or the complainant.

### § 708.3 What employee complaints are covered?

This part applies to a complaint of retaliation filed by an employee of a contractor that performs work on behalf of DOE, directly related to activities at a DOE-owned or -leased site, if the complaint stems from a disclosure, participation, or refusal described in § 708.5.

### § 708.4 What employee complaints are not covered?

If you are an employee of a contractor, you may not file a complaint against your employer under this part if:

(a) The complaint is based on race, color, religion, sex, age, national origin, or other similar basis; or

(b) The complaint involves misconduct that you, acting without direction from your employer, deliberately caused, or in which you knowingly participated; or

(c) Except as provided in § 708.15(a), the complaint is based on the same facts for which you have chosen to pursue a remedy available under:

(1) Department of Labor regulations at 29 CFR part 24, "Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes;"

(2) Federal Acquisition Regulations, 48 CFR part 3, "Federal Acquisition Regulation; Whistleblower Protection for Contractor Employees (Ethics);" or

(3) State or other applicable law, including final and binding grievance-arbitration, as described in § 708.15 of subpart B; or

(d) The complaint is based on the same facts in which you, in the course of a covered disclosure or participation, improperly disclosed Restricted Data, national security information, or any other classified or sensitive information in violation of any Executive Order, statute, or regulation. This part does not override any provision or requirement of any regulation pertaining to Restricted Data, national security information, or any other classified or sensitive information; or

(e) The complaint deals with "terms and conditions of employment" within the meaning of the National Labor Relations Act, except as provided in § 708.5.

### § 708.5 What employee conduct is protected from retaliation by an employer?

If you are an employee of a contractor, you may file a complaint against your employer alleging that you have been subject to retaliation for:

(a) Disclosing to a DOE official, a member of Congress, any other government official who has responsibility for the oversight of the conduct of operations at a DOE site, your employer, or any higher tier contractor, information that you reasonably believe reveals—

(1) A substantial violation of a law, rule, or regulation;